

Supreme Court, U.S.

FILED

OCT 19 1989

JOSEPH F. SPANIOL, JR.  
CLERK

(3)

No. 89-228

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

---

VOLKSWAGEN OF AMERICA, INC., AND

BELL PORSCHE-AUDI, INC.,

Petitioners

vs.

GERMAINE GIBBS, AMY GIBBS,

LORI GIBBS AND RAYMOND GIBBS

Respondents

---

---

BRIEF IN OPPOSITION TO WRIT OF CENTIORARI TO THE  
SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

---

---

JAMES HELY, ESQ.

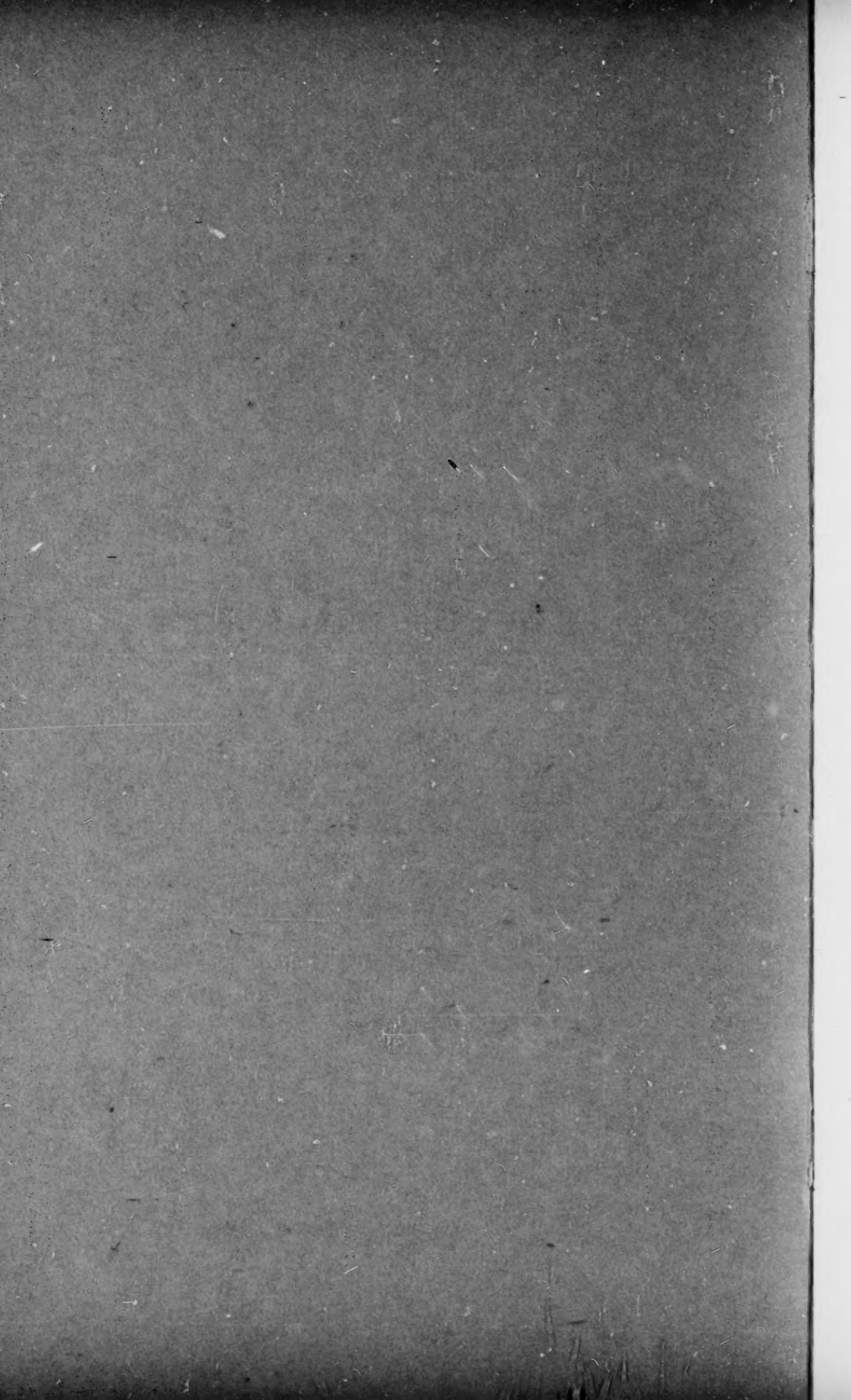
Counsel for Respondents

October 15, 1989

201 South Avenue East

Westfield, N.J. 07090

6 pp



## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES.....	i
ARGUMENT .....	1
I. THE TWO DUE PROCESS ISSUES RAISED BY PETITIONERS WERE SIMPLY NEVER RAISED BEFORE THE APPELLATE DIVISION OF THE NEW JERSEY SUPERIOR COURT .....	
	1
II. THE NEW JERSEY STANDARDS FOR PUNITIVE DAMAGES ARE EXTREMELY STRICT, AND NO DUE .....PROCESS VIOLATIONS OCCURRED AT THE TRIAL BELOW .....	
	1
III. TRIAL FORMAT IS CERTAINLY A MATTER FOR THE STATE COURTS TO APPROPRIATELY DETERMINE, AND THE DECISION NOT TO BIFURCATE THE TRIAL DID NOT VIOLATE ANY DUE PROCESS RIGHTS OF THE PETITIONER.....	
	3
CONCLUSION .....	4

## TABLE OF AUTHORITIES

Cases	Page
FISCHER V. JOHNS MANVILLE CORP., 103 N.J. 643 (1986) .....	2
Statutes	
N.J. Stat. Ann. 2A:58C-1 et. seq. (West 1987) .....	5

# THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

IN WHICH ARE CONTAINED  
THE SEVERAL ACTS OF PARLIAMENT  
AND THE SEVERAL DECREES OF THE  
COURTS OF JUSTICE

FROM THE BEGINNING OF HIS REIGN  
UNTIL HIS DEATH

BY JOHN BURNET  
BISHOP OF SALISBURY

LONDON

Printed by J. Streater, at the Sign of the Gun, in St. Dunstons Church-yard

1659

THE HISTORY OF THE

## ARGUMENT

### POINT I

#### **THE TWO DUE PROCESS ISSUES RAISED BY PETITIONERS WERE SIMPLY NEVER RAISED BEFORE THE APPELLATE DIVISION OF THE NEW JERSEY SUPERIOR COURT**

Respondent shall strictly follow the mandate of United States Supreme Court Rule 22.2. by responding with a brief that is "as short as possible." The simple fact is that petitioners never raised either of the two due process claims they now make in their Petition when the matter was fully before the Appellate Division of the New Jersey Superior Court. Objective proof of this appears in the lengthy opinion of the Appellate Division which appears as Appendix C of Petitioners Writ. App. C at 3a-15a. The Appellate Division opinion painstakingly went over each and every argument made by Volkswagen. The due process claims were not addressed by the Appellate Division because they just weren't made at that time.

Only after losing the punitive damage issues did Volkswagen seek to raise the due process claims. It would be grossly unfair to respondents and the the courts of New Jersey to grant this Petition on issues that were not properly raised below.

### POINT II

#### **THE NEW JERSEY STANDARDS FOR PUNITIVE DAMAGES ARE EXTREMELY STRICT, AND NO DUE PROCESS VIOLATIONS OCCURRED AT THE TRIAL.**

Again, the best place to start in evaluating Volkswagen's belated claims of due process violations is with the Appellate Division decision below. Petitioners' Appendix C at 3a-15a. That opinion recounts what it takes before a jury may award punitive damages. Generally, punitive damages are available where defendant's conduct is "especially egregious." Petitioners' Appendix C at 10a. More specifically, punitive damages are available only when a manufacturer is (1) aware of or culpably indifferent to an unnecessary risk of injury and (2) refuses to take steps to reduce the danger to an acceptable level. This standard can be met only by showing a deliberate act or omission with knowledge of

Petitioners are unable to cite a single case in which a court anywhere in the United States has held that the due process clause of the Constitution requires a clear and convincing standard. It is true that a small minority of states have chosen to establish a burden of proof at the "clear and convincing" level. This has been accomplished by legislation and by a handful of judicial decisions based on common law interpretations. Petitioners have cited all of these instances. Yet, the justice laboratories of the individual states seem to be the best place for that decision making. Again, not a single jurisdiction has indicated a "clear and convincing" standard is constitutionally mandated by the due process clause.

With regard to the contention that punitive damages are akin to a criminal conviction, this is absurd in light of the fact that Volkswagen was simply assessed civil monetary damages, still sells cars, and still claims nothing was ever wrong with their Audi 5000 cars. Audaciously, Volkswagen tries to hoodwink this Court by asserting that a post trial report of the National Highway Traffic Safety Administration found there was nothing wrong with the Audi 5000. In reality, that report precisely identified the pedal cluster problem proven at trial as the key culprit in the unintended acceleration phenomenon. It was Volkswagen's deliberate delay in addressing this problem which led to the punitive award. Investigative Report, Alleged Sudden Unwanted Acceleration, 1978-1986 Audi 5000 Passenger Cars Imported by Volkswagen of America, Inc., ODI Case No. C86-01 (Office of Defects Investigation Enforcement, National Highway Traffic Safety Administration, July, 1989) cited at Petitioners' brief, page 4.

### POINT III

TRIAL FORMAT IS CERTAINLY A MATTER FOR THE  
STATE COURTS TO APPROPRIATELY DETERMINE,  
AND THE DECISION NOT TO BIFURCATE THE TRIAL  
DID NOT VIOLATE ANY DUE PROCESS RIGHTS OF  
THE PETITIONER.

Petitioners are again unable to cite a single case anywhere in the country where it has been held that the failure to bifurcate liability and compensatory damage issues from punitive damage

a high degree of probability of harm and reckless indifference to the consequences." Petitioners' Appendix C at 11a; Fischer v. Johns Manville Corp., 103 N.J. 643, 672-674 (1986).

The Appellate Division of the Superior Court of New Jersey below succinctly stated some of the facts leading to the punitive award. The Court said:

The proofs were adequate to allow a jury to determine that Volkswagen knew long before the accident that dangerous sudden unwanted acceleration was caused, at least in part, by simultaneous actuation of brake and accelerator pedals, decided to blame driver error, even though Audi 5000 runaway incidents exceeded those of other Volkswagen marketed vehicles by a factor of 50 to 100. Creation of the product liaison group, a quasi-legal department developed to investigate the acceleration problem suggests that Volkswagen's remedial effort were not merely slow, as acknowledged by the trial judge's opinion, but primarily concerned with profits and legal problems rather than prompt correction of a serious product safety hazard.

Petitioners' Appendix C at 11a-12a

While Volkswagen never argued to the Appellate Division of the New Jersey Superior Court that a clear and convincing standard was necessary, Volkswagen did make numerous claims of error with respect to the judge's charge to the jury. Again, after a complete review of the charge, the Appellate Division found "that the charge, as a whole, clearly and correctly instructed the jury on all relevant principles of law pertinent to the case at bar." Petitioners' Appendix C at 15a.

It is of note that the size of the punitive damage award showed extreme restraint on the part of the jury. While compensatory damages in the case amounted to \$14,000.00, the punitive damages were \$100,000. There has never been a question raised in this case that the size of the award was inappropriate. Thus, the amount of punitive damages which has recently been a subject discussed by the U.S. Supreme Court is not present here.

issues is a violation of the due process clause. A few states have decided that bifurcation is appropriate. New Jersey, by legislation which took effect after the within matter was filed, has decided to bifurcate punitive damage issues from underlying liability and damage issues. N.J. Stat. Ann. 2A:58C-1 et. seq. (West 1987)

It is a disgrace that Petitioners would attempt to mislead the United States Supreme Court on the question of when the new statute guiding product liability trials in New Jersey went into effect. It is quite clear from reading the law that the Legislature intended that any procedural changes the law made would apply only to cases filed after July 22, 1987. N.J. Stat Ann. 2A:58C-1 et. seq. (West 1987). Obviously, that is how the trial and appellate courts of New Jersey interpreted the statute in this instance.

There is not a shred of evidence that the jury which unanimously awarded punitive damage below was confused or prejudiced against Volkswagen. The jury acted with restraint in terms of the monetary award, and as the Appellate Division Opinion makes plain, the jury was completely and adequately charged on the different proofs required to reach an award on compensatory damages and punitive damages.

### CONCLUSION

For these reasons, it is hoped that the Petition will be denied. While we had asked that the matter be submitted to the Court without a reply, the Court has requested us to respond. We hope we have not trespassed on the Court's time.

Respectfully submitted,

James Hely,  
Attorney for Respondents

